IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
APPEAL NO.1162 OF 2005
IN
SUMMONS FOR JUDGMENT NO.440 OF 2005
IN
SUMMARY SUIT NO.1300 OF 2005

Atul K. Thakkar & anr. .. Appellants

v/s.

Kavita K. Shastri .. Respondent

Mr.A.M.Saraogi with Mr.S.K.Chaurasia for the appellants.

Mr.B.A.D'Lima i/by M/s.D'Lima & Associates for the respondent.

CORAM : R.M.LODHA AND
ANOOP V. MOHTA, JJ.

DATED : 13th January, 2006

P.C.

Heard.

2. Admit.

3. M/s.D'Lima & Associates waives service for the respondent.

4. By consent, appeal is heard finally at this stage.

5. The learned counsel for the appellants would submit that the subject bill of exchange was forged and fabricated. He, however, submits that the appellants are ready and willing to deposit the principal amount of the subject bill of exchange and that conditional leave to defend may be granted to the appellants.

6. The learned counsel for the respondent did not object to the grant of conditional leave to the appellants on deposit of the principal amount of the subject bill of exchange.

7. Having considered the matter, we are of the view that there being dispute about the genuineness of the subject bill of exchange and the appellants are ready and willing to deposit the principal amount of the bill of exchange, it would be in the interest of justice if conditional leave to defend is granted to the appellants.

8. We, accordingly, allow the appeal and set aside the impugned judgment and order and pass the following order:-

(i) The appellants (defendants) are granted leave to defend the suit subject to their depositing a sum of Rs.2,50,000/- (Rupees Two lacs fifty thousand) with the Prothonotary & Senior Master of this court within eight weeks from today.

(ii) The respondent (plaintiff) shall be at liberty to withdraw the said amount on furnishing solvent surety or security to the satisfaction of the Prothonotary & Senior Master.

(iii) If within one month from the date of the intimation of the deposit, the respondent (plaintiff) does not withdraw the amount, the Prothonotary & Senior Master shall invest the said amount in fixed deposit of any nationalised bank initially for a period of three years renewable thereafter for the same period each time until disposal of the suit.

(iv) Upon deposit of the amount, the suit shall stand transferred to the List of commercial causes and proceeded with accordingly. On the other hand, if the amount is not deposited by the appellants (defendants) as aforedirected, the appeal shall be treated as dismissed and the respondent (plaintiff) shall be entitled to execute the decree.

No costs.

(R.M. LODHA, J.)

(ANOOP V. MOHTA, J.)